IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 10041 of 1994

For Approval and Signature:

HON'BLE MR.JUSTICE D.H.WAGHELA Sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

1 to 5 NO

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Versus

EUPHORIC PHARMACEUTICALS

Appearance:

1. Special Civil Application No. 10041 of 1994

MR AK CLERK for Petitioner No. 1

MR RM CHHAYA for Petitioner No. 2

MR KM PATEL for Respondent No. 1

CORAM : HON'BLE MR.JUSTICE D.H.WAGHELA

Date of decision: 22/12/2004

ORAL JUDGEMENT

1. By this petition, styled as a petition under

Article 226 of the Constitution, the petitioner-workmen have, in reality, challenged the award and order dated 1.6.1994 of the Labour Court, Bharuch whereby the Reference was rejected and the respondent was ordered to pay to the petitioners retrenchment compensation and notice pay. The petitioner-workmen have challenged the award on several grounds, particularly challenging the findings of facts as regards violation of the provisions of Sections 25-F, 25-G and 25-H of the Industrial Disputes Act, 1947 (for short "the Act") as recorded by the Labour Court in the impugned award.

2. According to the case of the petitioners before the Labour Court and before this Court, they were employed as operators by the respondent and they were representing the workmen in the matters of industrial dispute with the respondent-employer. Suddenly on 4.10.1986, their services were terminated without any notice and without payment of compensation and, even as the manufacturing activity of the respondent was carried on with the employees junior to them and even fresh recruitments were made, the petitioners were not taken on job. Thus, in short, according to the petitioners, termination of their service was illegal and by way of victimisation. It was clearly deposed by the petitioners in their depositions at Exhs.15 and 16, copies of which were placed on record, that even notice of retrenchment was not given to them or served upon them on the date of termination, i.e. 4.10.1986. It was also deposed by them that they were union leaders and employees junior to them were continued in service and that fresh recruitment was made after termination of their service. As against that, the Joint Managing Director of the respondent was examined before the Labour Court and his deposition was recorded at Exh.45. According to his deposition, the letter of termination dated 4.10.1986 at Exh.48 was tendered on 4.10.1986, but the petitioners had refused to accept the same on that date and the same was accepted on 7.10.1986. It was also admitted that out of all the employees employed by the respondent, a common seniority list was made and displayed by the respondent before the date of termination and the petitioners appeared at serial No.27 and 28 on that list. Remarkably, although operators and helpers were in two different categories, a common seniority of both the categories of workmen was made. It was also admitted by him that other employees shown to be in different categories could and used to, at times, do the work which the petitioners were doing. He expressed complete ignorance about how the amount of retrenchment compensation was tendered or paid, but admitted that there was no noting of refusal by the

petitioners of accepting the letter of retrenchment. It was also admitted by the main witness of the respondent that the total strength of staff was 70 to 85 persons at the time of retrenchment and, out of that, seniority list of only 28 persons was prepared and at the time of his deposition before the Court, i.e. in 1993, there were approximately 100 employees employed in the respondent company. Although it was alleged that the additional staff subsequently recruited by the respondent was through contractors, there is no documentary evidence of the same on record and it is admitted that as and when the workmen under the so-called contractor were employed, the petitioners were not called. It is also admitted by him that the petitioners used to meet him for discussion of the union matters and immediately after the retrenchment on 4.10.1986, there was a lock-out pursuant to the demand for bonus which was being agitated by the workmen.

2.1 Reading the letter of termination dated 4.10.1986 (at Annexure-C to the petition), it is crystal clear that the petitioner Shri Hasmukhbhai S. Patel was discharged from service after the working hours on 4.10.1986 itself by way of retrenchment on the ground of reduction in number of posts. It was also stated in no uncertain terms that notice pay and retrenchment compensation were being sent to the residential address of the workman by money order.

3. As against the salient features of the evidence adumbrated hereinabove, the Labour Court has, in the impugned award, consistently drawn all the inferences against the petitioners. Firstly, on the issue of the petitioners being union representatives, the Labour Court has taken the view that in absence of any evidence suggesting that the petitioners were holding any post in the union, it cannot be believed that the petitioners were representing the workmen. The lists of workmen who were in service at the time of retrenchment, produced by the petitioners are discarded only on the ground that they are not made or signed by any one on behalf of the company. Even while noticing the fact that complete category-wise seniority list of the workmen was not produced on record, the Labour Court has come to the conclusion that in absence of the seniority list of any other category, it cannot be believed that workmen junior to the petitioners were retained in service. As for the contention of violation of the provisions of Section 25-F of the Act, it is held that the petitioners did not appear to have accepted the amounts and it is not compulsory to pay retrenchment compensation along with

the order of retrenchment. Even the admission of the respondent that approximately 100 employees were working under them has been interpreted in favour of the respondent to hold that the employees newly recruited by the respondent are not employees of the respondent. Thus, in short, every contention of the petitioners has been negatived for either absence of documentary evidence or because there is some contrary oral evidence led by the respondent. The findings of facts, as recorded by the Labour Court are, therefore, perverse and far from impartial, leading to improper application of the provisions of law and ultimately miscarriage of justice.

4. Having perused the depositions of the petitioners and the witness of the respondent as also the documentary evidence in the form of the order by which the petitioners were retrenched, it is quite obvious and the conclusion is inescapable that the petitioners were discharged from service first by a peremptory order on 4.10.1986 and the tender or sending of the order was subsequent to the action of discharging them. There was no question of the amount of retrenchment compensation and notice pay being offered at the time of termination since the order itself clearly stated that the amounts were being sent by money order. If only payment of compensation and notice pay were necessary under the provisions of Section 25-F of the Act, then, the question of substantial compliance with the provisions by subsequent offer could have arisen. But in view of the clear provision making the payment a condition precedent, absence of not only payment but even offer of payment at the time of terminating the service renders the termination void ab initio and such illegality cannot be cured by making an offer or payment afterwards. The legal proposition cobbled and relied upon by the Labour Court to the effect that it was not compulsory to pay retrenchment compensation along with retrenchment order is clearly contrary to the well-settled legal position. It is an error of law apparent on the face of the record. The impugned award is, therefore, liable to be set aside only on that ground. Besides that, the totality of the surrounding circumstances also clearly indicate that there was no permanent reduction in the staff or immediate necessity of terminating the services of the petitioners, but it was their leadership of the trade union or their union activity that precipitated their discharge from service with immediate effect. Looked at from that angle, the termination of service of the petitioners was not only illegal but also by way of victimisation and unfair labour practice.

5. By virtue of endemic delays of the system, termination of service in October 1986 came to be adjudicated in 1993 and the petition preferred in 1994 came up for final disposal in 2004. Therefore, it is more than 18 years that have passed in the meantime and that fact has to be taken into account while moulding the relief. As observed by the Supreme Court in MANAGEMENT OF M.C.D. v. PREM CHAND GUPTA [AIR 2000 SC 454], for no fault of the contesting parties, the litigation lingers on for decades and grant of full backwages for such a long period would be too harsh to the employer, although the workman may not be at fault. The workmen for all these years also could not have remained totally unemployed although there is not and there cannot be clear evidence of their gainful employment once the stage of evidence of the employer was over.

6. In the above facts and circumstances, although it was jointly suggested by the learned counsel that the matter may be remanded for the purpose of taking evidence as regards backwages, it appears to be appropriate and in the interest of justice to put an end to the litigation by allowing the petition and setting aside the impugned award with an order to the respondent to reinstate the petitioners forthwith with 50% of backwages to be paid within one month from today. Rule is made absolute with costs of Rs.5,000/- to be paid by the respondent to the petitioners along with the amount of backwages.

Sd/-

(D.H.Wagela,J.)

(KMG Thilake)